39

Comments of
Parsons & Whittemore Incorporated

Department of Energy (DOE)
Notice of Proposed Rulemaking
Loan Guarantees for Projects that Employ Innovative Technologies
RIN 1901-AB21

Parsons & Whittemore appreciates this opportunity to comment on the Department of Energy's proposed rule regarding policies and procedures applicable to DOE's Loan Guarantee Program authorized by Title XVII of the Energy Policy Act of 2005.

Parsons & Whittemore – Background

Parsons & Whittemore (P&W) is an industrial operator of wood pulp mills with significant experience in process industry design and construction. The company has diversified its activities by expanding recently into the biofuels arena, with the start up this year of a 40 million gallon biodiesel plant, and is actively partnering in the development of next generation biofuels technologies.

Requests for Comments:

1. Definition of New or significantly improved technologies (p. 27474)

The proposed definition is too narrowly defined, focusing on 'meaningful and important improvements in the productivity value of the technology'. This fails to capture potential value of 'systems' rather than individual technologies. P&W recommends expanding the definition of 'new or significantly improved' to include improvements from **new systems** or **systems integration.**

2. General use definition (not eligible for loan)- Alternatives interpretation and approaches (p. 27474)

P&W approves of this definition.

3. Project Costs Proposed: any loan guarantee by DOE may not exceed 80% of total Project Costs (p.27474)
Included: those costs that are necessary, reasonable, customary, and directly related to the design engineering, financing, construction, startup, commissioning and shake down of an eligible project
Excluded: initial R&D, credit subsidy cost, admin. Fees subsequent to 1702 (h) and operating costs after facility placed in service

P&W asserts that subsidy costs and fees paid for administrative costs of issuing a loan guarantee should be included in loan coverage. These are financing costs incurred and expended by sponsors and, therefore, should be included in project costs. Excluding these costs is inconsistent with treatment of similar costs in commercial project financing and in other federal programs. For example, the exposure fee charged by Export-Import Bank is not only counted as a project cost, but borrowers can elect to have that cost financed under the Ex-Im Bank loan or loan guarantee.

4. Assessment of fees for the DOE's administrative expenses (27476)

The basis of these fees is ill-defined in the current language. P&W recommends that First, Second and Third fees must be known and fixed at the time of the application and should be included as part of the project costs.

5. Proposal to allow up to 90% of loan guarantee obligation (27476)

While Title XVII is clear that DOE can only guarantee 80% of project costs, P&W asserts there is no basis in law or in administrative practice for restricting the loan guarantee to 90% of project debt (nothing in Title XVII that explicitly precludes a higher percentage). To provide the lowest cost of financing that will do the most to meet the stated goal of stimulating commercial development of advanced technologies, DOE should provide 100% guarantees on debt up to 80% of total project costs. By providing 100% guarantees on dept, DOE will eliminate the issues around 'pari passu' of debt and stripping.

If these rules are accepted, the limitation to 90% of loan guarantee restriction will reduce the value of the loan guarantee significantly, increasing the project's capital costs and, therefore, compromising project economics. The DOE should be able to fund up to 100% of the loan guarantee obligation as has been done in TIFFIA and Import-Export loan guarantee programs.

6. The prohibition on 'stripping' (27476)

To meet this requirement, the lender that originates the guarantee is required to hold the un-guaranteed loan. By requiring the guaranteed and non-guaranteed debt to be sold together, the DOE is forcing potential financers to purchase a 'hybrid' product for which no market currently exists. There are well established markets for selling both 'government guaranteed debt' and a wide variety of 'private debt', but there are no markets for the type of 'hybrid debt' resulting from the proposed DOE loan structure (i.e. guaranteed debt that is coupled with non-guaranteed debt). The lack of an existing market for reselling the debt may preclude financing and/or will cause less favorable terms for the Project Sponsor than if stripping were allowed. Thus, in order to obtain better loan terms for Project Sponsor, P&W recommends stripping be allowed.

7. Whether DOE should establish a project size (dollar) threshold below which the Dept. would have authority to waive credit rating requirement (27476)

P&W proposes a threshold of $25M for waiving credit rating requirement.

Other Comments:

Prohibition of Pari passu financing structures under DOE guidelines

If the DOE follows its proposal to limit guarantees to less than 100% of debt, then P&W asserts it must allow private lenders 'pari pasu' security status on the resulting subordinated private debt in their financing mix. The superior position of the guaranteed debt in the proposed rule makes the program less attractive to top-tier lenders, increasing financing costs which would essentially eliminate the very benefits the loan guarantee is attempting to provide. This rule would effectively require more expensive sub-debt financing structures, significantly compromising the financeability of the project.

There are ample examples of other federal loan guarantee programs which allow private debt to be *pari passu*, including the Federal Transportation Infrastructure Finance and Innovation Act (TIFIA), where private debt is senior to the guarantee prior to any bankruptcy proceedings. Additionally, guarantees provided by the Overseas Private Investment Corporation and the Export-Import Bank both allow private debt to be *pari passu.*

While language in Title XVII requires DOE to be in a superior position, it does not preclude DOE from sharing a senior position with other private lenders—DOE could have a superior position for the fraction of the asset guaranteed by DOE, while affording private lenders a similar position for the fraction financed by them—e.g. *pari passu*.

The DOE Guidelines should clarify that the guaranteed debt is 'non-recourse' beyond the project

Currently, Section 1702(g)(4)(B) of the regulation makes clear that in event of default, the loan guarantee is non-recourse beyond the project. This non-recourse provision is essential for successful project financing scenarios. The implementing regulations should clarify that guaranteed loans will require security in only the project assets, contracts and agreements.

Preference for single source of federal financial assistance (precludes other federal loans) p. 27476

Project Sponsors should be able to secure additional Federal financial assistance sources in order to make the project possible. Using multiple sources of funding will enable those technologies that are eligible for a variety of loan categories to realize maximum funding and would enable DOE to share financial liability with other governmental organizations.

Request defined timeline around processing applications and loan awards

In order for P&W to effectively plan its project development life cycle it is crucial that the DOE clearly define timeline around application processing and loan awards. The potential benefit these technologies can provide to society requires that they be developed as rapidly as possible. Additionally, there are sensitivities around 'time to market' that might preclude engagement with the loan guarantee program if it's going to move too slowly.